

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

AT CHARLESTON

**NORTH AMERICAN PRECAST, INC.
And G & G BUILDERS, INC.,**

Plaintiffs,

v.

**Civil Action No. 3:04-cv-1307
Honorable John T. Copenhaver, Jr.**

**GENERAL CASUALTY COMPANY OF
WISCONSIN, a Wisconsin corporation,**

Defendant.

FINAL ORDER

Came this day the parties to the above-styled action, by their counsel, whereupon the Court was advised that the parties have reached an agreement and resolution as to those claims and issues remaining before the Court. Specifically, the Court was advised that the parties have reached an agreement for the resolution of the claims of North American Precast, Inc. for compensatory damages arising from Defendant's "bad faith," breach of contract and violations of the West Virginia Unfair Trade Practices Act, as well as the Plaintiffs' claims for attorney fees and expenses from August 22, 2008, through the date of the entry of this Order.

The Court was further advised the agreement and resolution reached by the parties expressly reserves the Plaintiffs' right to appeal, should they choose to do so, as follows:

- a) The Court's bench ruling of August 20, 2008, at Trial Transcript, Vol. VI, at Pages 774-775, and the Court's Memorandum Opinion and Order of January

15, 2010, concerning the dismissal and/or disposition of North American Precast, Inc.'s claims for recovery of punitive damages;

- b) The Court's Memorandum Opinion and Order of January 15, 2010, and the Court's Memorandum Opinion and Order of September 15, 2009, regarding the third-party claims of G & G Builders for damages arising from Defendant's violations of the Unfair Trade Practices Act, including any claim for recovery of punitive damages, to the extent, if any, such claims were pursued at Phase II of the trial of this action, which began on August 18, 2008; and
- c) The Court's March 31, 2008 Memorandum Opinion and Order, denying Plaintiffs' Motion for Summary Judgment, except that it was granted to the extent coverage exists for damage to the masonry walls and concrete floor caused by the collapse of the plank, and granting the Defendant's Motion for Summary Judgment, except that it was denied to the extent that coverage exists for damage to the masonry walls and concrete floor caused by the collapse of the plank.

And the Court, upon motion of the parties, does hereby **ORDER** as follows:

1. That the present action is hereby **DISMISSED** from the docket of the Court, inasmuch as the parties have resolved by agreement all claims remaining before the Court.
2. The Parties have reserved the Plaintiffs' right to appeal, should they choose to do so, as follows:

- a) The Court's bench ruling of August 20, 2008, at Trial Transcript, Vol. VI, at Pages 774-775, and the Court's Memorandum Opinion and Order of January 15, 2010, concerning the dismissal and/or disposition of North American Precast, Inc.'s claims for recovery of punitive damages.
- b) The Court's Memorandum Opinion and Order of January 15, 2010, and the Court's Memorandum Opinion and Order of September 15, 2009, regarding the third-party claims of G & G Builders for damages arising from Defendant's violations of the Unfair Trade Practices Act, including any claim for recovery of punitive damages, to the extent, if any, such claims were pursued at Phase II of the trial of this action, which began on August 18, 2008.
- c) The Court's March 31, 2008 Memorandum Opinion and Order, denying Plaintiffs' Motion for Summary Judgment, except that it was granted to the extent coverage exists for damage to the masonry walls and concrete floor caused by the collapse of the plank, and granting the Defendant's Motion for Summary Judgment, except that it was denied to the extent that coverage exists for damage to the masonry walls and concrete floor caused by the collapse of the plank.

3. The resolution and agreement reached by the parties encompasses the Plaintiffs' claims for attorney fees and expenses from August 22, 2008 to the date of the entry of this Order, and Plaintiffs' claims for such attorney fees and expenses are **DISMISSED**.

The Clerk of the Court is hereby instructed to forward certified or attested copies of this Order to counsel of record as follows:

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ENTER this 21st day of January, 2010.


Honorable John T. Copenhagen, Jr.

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